IN THE

Supreme Court of the United States

DEC 4 1973
MICHAEL RODAK, JR., CLERK

October Term, 1972

No. 72-1264

MAYOR OF THE CITY OF PHILADELPHIA, et al.,
Petitioners

v.

EDUCATIONAL EQUALITY LEAGUE, et al.,
Respondents

REPLY BRIEF FOR PETITIONERS

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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ARGUMENT

Petitioners submit this reply brief to this Honorable Court for the purpose of responding to several misstatements and assertions made by respondents in their brief.

On page 7 of their brief, respondents make the following statement:

> c. Civil Service appointments to positions with salaries of $15,000 a year, carried out under the supervision of the City Personnel Director, (responsible to the Mayor under the City Home Rule Charter) were 742 whites and 49 blacks (6%).[22]

Contrary to respondent's assertion, the Personnel Director is indisputably *not* subject to the Mayor under the Home Rule Charter. Section 3-205 of the Charter provides that, "The Civil Service Commission shall appoint the Personnel Director." The Annotation to Section 3-205, authorized by the Charter Drafting Committee contemporaneously with the Charter itself, provides:

> The Civil Service Commission, rather than the Mayor, has been designated as the appointing power of the Personnel Director as a step towards assuring the complete *independence of the Personnel Director* and the separation of the administration of the civil service system from partisan political considerations and influences, direct or indirect. This is an indispensible requirement of any true merit system of City employment. [Emphasis ours].

Respondents' misstatement of the Charter is compounded by the misrepresentation in footnote 22 which enumerates twenty cases supposedly probative of racial discrimination in the appointment of the Educational

Nominating Panel. In six of the twenty cases cited, neither the City nor any officer or agency thereof was a party.[1]

Racial Discrimination was not a factor in nine of the remaining fourteen cases.[2] Of the remaining five cases, only one, *Commonwealth of Pennsylvania v. O'Neill*, 348 F. Supp. 1084 (E.D. Pa. 1972), had anything to do with racial discrimination in employment; and, in that case, at 348 F. Supp. 1104, the District Judge specifically refused to find intentional racial discrimination.

As if it were not enough for respondents to use this litany of irrelevant cases to prove racial discrimination in the case at bar, respondents also refer to them at page 39 of their brief (Footnote 107), in an attempt to impart racial discrimination to the present Mayor, Frank L. Rizzo. The record in this case is *totally devoid of any evidence of any discriminatory practice on the part of Mayor Rizzo*. It is most distressing that the Lawyers' Committee for Civil Rights Under Law, self-styled protector of constitutional rights and attorney for plaintiffs herein, would even insinuate that the naming of Mayor Rizzo as a defendant in

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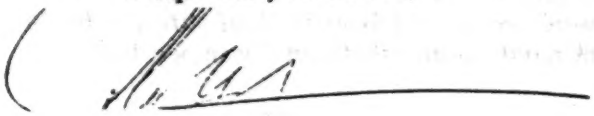
1. *Nicholson v. Pittenger*, C.A. No. 72-1596; *Shannon v. HUD*, 436 F.2d 809 (3rd Cir. 1970) [Mr. Wolf, as attorney for plaintiffs in *Shannon* should be aware that there were no municipal defendants in that case]; *Germantown Community Council v. HUD*, C.A. No. 69-2426; *Washington Square West Project Area Committee v. HUD*, C.A. No. 69-2972; *Residents Advisory Board v. Philadelphia Housing Authority*, C.A. No. 72-2399; *Brown v. Philadelphia Housing Authority*, C.A. No. 72-2083.

2. *Black v. Rizzo*, 360 F. Supp. 648 (E.D. Pa. 1972); *Jackson v. Hendrick*, (C.P. Phila.) Feb. Term, 1971, No. 2437; *Resistance v. Commissioners of Fairmount Park*, C.A. No. 69-819; *Leslie Tobin Imports v. Rizzo*, 305 F. Supp. 1135 (E.D. Pa. 1969); *Hughes v. Rizzo*, 282 F. Supp. 881 (E.D. Pa. 1968); *Peace Inc. v. Philadelphia*, C.A. No. 70-2101; *Friends Peace Committee v. O'Neill*, C.A. No. 72-992; *Free Press, Inc. v. Rizzo*, C.A. No. 70-3175; *Farber v. Rizzo*, C.A. No. 72-2052.

other suits should have any bearing whatsoever on the decision in the instant case.

Respectfully submitted,



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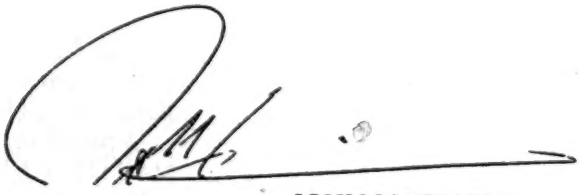
CERTIFICATE OF SERVICE

I, John Mattioni, Deputy City Solicitor, do hereby certify that three copies of the Reply Brief for Petitioners were served on Edwin D. Wolf, attorney for Respondents, by hand, on the 5th day of December, 1973.



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